

CRM-M-35717-2012(O&M) &
CRM-7045-2014 in CRM-M-33075-2011

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**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

(1) CRM-M-35717-2012(O&M)

Girraj @ Jitender

...Petitioner

Versus

Om Parkash and others

...Respondents

(2) CRM-7045-2014 in
CRM-M-33075-2011

Jitender @ Girraj and others

...Petitioners

Versus

State of Haryana and another

...Respondents

Date of Decision:-11.9.2018

CORAM: HON'BLE MR.JUSTICE H.S.MADAAN

Present: Mr.Kunal Dawar, Advocate
for the petitioners.

Mr.Neeraj Poswal, AAG, Haryana.

Mr.Shiv Kumar, Advocate
for the complainant.

H.S. MADAAN, J.

By this order, I shall dispose of CRM-M-35717-2012 filed by petitioner Girraj @ Jitender for quashing of application/complaint bearing case No.341/1 dated 22.11.2010 seeking initiation of proceedings under Section 182 IPC moved by respondent against the petitioner along with all subsequent proceedings arising therefrom including order dated 22.11.2010 passed by SDJM, Hathin, issuing notice upon such application on the basis of compromise as evident from order dated 16.12.2011 passed by this Court in CRM-M-33075 of 2011 and CRM-7045-2014 filed by applicant/respondent No.2 for recalling the order dated 16.12.2011 passed in CRM-M-33075-2011.

Inter alia in CRM-M-35717-2012, it is contended that marriage between petitioner Girraj @ Jitender and respondent No.2 Satyawati was solemnized on 20.6.1995 as per Hindu rites and ceremonies; that after the marriage, the couple cohabited together but were not blessed with any child; unfortunately the spouses could not lead happy marital life, resultantly Satyawati lodged FIR No.49 dated 30.1.2002 for the offences under Sections 498-A, 406, 494, 506 IPC with Police Station Sector-7, Faridabad against the petitioner and his family members; in addition to that she had brought a petition under Section 125 Cr.P.C. for maintenance against the present petitioner; the petitioner had also filed a criminal complaint under Sections 323, 324, 452, 506, 34 IPC against his wife Satyawati, Satyawati's brother Om Parkash and mother Maya; in the said criminal complaint, the respondents were acquitted by SDJM, Hathin vide judgment dated 25.10.2010; the petitioner had filed an

appeal against that judgment, whereas Om Parkash, brother of Satyawati had filed a criminal complaint for defamation against the present petitioner; that in the meanwhile respondents had filed a complaint seeking initiation of proceedings under Section 182 IPC against the petitioner for the reason that in para No.16 of the judgment passed by SDJM, Hathi, while dismissing the criminal complaint filed by the present petitioner and acquitting the respondents in that case had observed that the complaint was nothing but a bundle of lies, filed as a pressure tactics due to State cases; that vide order dated 22.11.2010, notice of the application was ordered to be issued.

According to the petitioner, the trial Court has straightway issued the notice of application without due application of mind for the reason that cognizance of offence under Section 182 IPC could only be taken by way of filing a complaint in writing by a public servant in terms of Section 195 Cr.P.C. and not by private individuals, however, the trial Magistrate vide order dated 14.7.2011 had served notice of accusation upon the petitioner but the parties had arrived at a compromise in Daily Lok Adalat held at Palwal Courts wherein their statements were recorded and as per the terms of the agreement, the petitioner would pay a sum of Rs.7,50,000/- to respondent No.2 as settlement of permanent alimony and both the spouses agreed to get their marriage dissolved by a decree of divorce by mutual consent settling all the disputes; that both the parties agreed to withdraw all the cases filed by them against each other; that an amount of Rs.7,50,000/- was agreed to be given to respondent No.2 at the time of quashing of the FIR; that petitioner along with his family

members, who are accused in FIR approached this Court by way of filing CRM-M-33075-2011 for quashing of FIR and subsequent proceedings arising therefrom on the basis of compromise; in the said petition, the respondent No.2 Satyawati put in appearance and filed an affidavit dated 16.12.2011 with regard to factum of compromise, wherein it was clearly stated that both the parties would withdraw all civil and criminal cases filed by them against each other; that thereafter vide order dated 16.12.2011 FIR (Anenxure P-1) was quashed on the basis of compromise; that a draft of Rs.7.5 lakhs was handed over to respondent No.2 in the Court. However, offence under Section 182 IPC being not compoundable and notice of accusation having been issued, the petitioner has approached this Court by way of filing the present petition. It is further pleaded that an appeal was filed by the petitioner against the judgment dated 25.10.2010 passed by the trial Court acquitting the respondents, in the Court of Additional Sessions Judge, Palwal but as a result of settlement between the parties, he has since withdrawn that appeal.

It has further been contended that cognizance of offence under Section 182 IPC can be taken by the Court only on the complaint of a public servant as per mandate of Section 195(1)(a) (i) Cr.P.C. Legal position has also been given stating that the Apex Court in authority **B.S. Joshi and ors Versus State of Haryana anr., 2003(2) RCR(Criminal)888** has held that in case of matrimonial disputes, High Court may quash the proceedings where parties settle their disputes as it is the duty of the Court to encourage genuine settlement of matrimonial disputes. Another citation in that regard has been referred to as **Madan Mohan Abbot Versus State**

of Punjab, 2008(2) RCR(Criminal) 429. In the end, a prayer for acceptance of petition has been made.

On notice of CRM-M-35717-2012, the respondents appeared. Respondent No.2 filed reply to the petition craving for dismissal of the petition.

I have heard learned counsel for the parties, besides going through the record and I find that there is merit in the petition.

The very maintainability of complaint under Section 182 IPC is suspect. Section 195 IPC deals with offence of giving or fabricating false evidence with intent to procure conviction of offence punishable with imprisonment for life or imprisonment.

Section 182 IPC deals with case of false information, with intent to cause public servant to use his lawful power to the injury of another person.

Section 195 Cr.P.C. deals with prosecution for contempt of lawful authority of public servants providing that:

No Court shall take cognizance-

- [\(a\)](#) (i) of any offence punishable under sections 172 to 188 (both inclusive) of the Indian Penal Code (45 of 1860), or
- [\(ii\)](#) of any abetment of, or attempt to commit, such offence, or
- [\(iii\)](#) of any criminal conspiracy to commit such offence, except on the complaint in writing of the public servant concerned or of some other public servant to whom he is administratively subordinate.

Here in the present case a very strange procedure has been adopted by Judicial Magistrate, concerned. Om Parkash – respondent

No.1 had filed an application to initiate proceedings under Section 182 IPC against Girraj. It was for the Court concerned after making due inquiry as to whether any complaint was to be filed or not. The Court rather issued notice to respondent Girraj and when he put in appearance, served notice of accusation upon him treating it like a private complaint case, which was certainly not required in accordance with law. Furthermore, mere some observations made in the judgment, while dismissing the criminal complaint filed by petitioner against respondents, does not mean that complaint under Section 182 IPC was required to be filed. It had to be first seen whether false information had been given to any public servant, which the informant knew or believed such information to be false with an intention thereby to cause or likely to cause that public servant would do or omit anything, which he ought not to do or omit if true facts were within his knowledge and lawful power of such public servant was used to cause injury or annoyance to any person. No such satisfaction is shown to have been recorded by the trial Magistrate. He has developed a strange procedure to deal with the issue. Therefore, the application for initiating proceedings under Section 182 IPC against the present petitioner and all subsequent proceedings including his summoning and serving of notice of accusation upon him are not sustainable.

Similarly, the dispute between the parties has been settled amicably and continuance of proceedings in question is uncalled for. Learned counsel for the petitioner has referred to authority **Ruchi Agarwal Versus Amit Kumar Agrawal, 2004(4) RCR(Criminal)949** by

the Apex Court, wherein it was observed that when the parties had entered into compromise and got divorce by mutual consent, however wife was not withdrawing FIR under Sections 498-A and 506 IPC despite compromise, the FIR was quashed observing that wife just wanted to harass her husband even after getting the relief. He has further referred to authority *Mohd. Shamin Versus Smt.Nahid Begum, 2005(1) RCR(Criminal)697* by Hon'ble Supreme Court. It was a case when an FIR under Sections 498-A, 406 IPC was registered on account of matrimonial dispute between the two spouses, however, the wife had entered into settlement at intervention of Court and accepting Rs.2.25 lacs from husband, though subsequently she backed out, the FIR was quashed observing that in view of conduct of wife, continuance of proceedings would be an abuse of process of law. Learned counsel for the petitioner further pressed into service *Purshotam Gupta and Ors. Versus State and Anr., 2008(2) RCR(Criminal)564, Jinander Mann Versus State, 2007(5) AD(Delhi) 180* and *Rajinder Kumar Chhibbar Versus Aseem Bakshi, 2006(3) RCR(Criminal)586*.

Therefore, CRM-M-35717-2012 stands allowed and application/complaint bearing case No.341/1 dated 22.11.2010 seeking initiation of proceedings under Section 182 IPC moved by respondent against the petitioner along with all subsequent proceedings arising therefrom including order dated 22.11.2010 passed by SDJM, Hathin stand quashed.

As regards connected CRM-7045-2014 in CRM-M-33075-2011 for recalling order dated 16.12.2011, vide which FIR No.49 dated

30.1.2002 under Sections 498-A, 406, 494, 506 IPC registered with Police Station Sector-7, Faridabad and all subsequent proceedings emanating therefrom had been quashed on the basis of compromise, the application is doomed for failure.

According to the applicant, Girraj is blackmailing him. Girraj is taking undue advantage of the compromise and order passed by this Court, therefore, order be recalled; the compromise be cancelled and proceedings arising out of FIR be ordered to be revived. An undertaking has been given for return of Rs.7.5 lakhs paid by petitioner at the time of settlement.

This request is being resisted on behalf of Girraj @ Jitender.

From the record, it comes out that the compromise had been entered into between the parties voluntarily and there is no question of any pressure or undue influence being exerted on any of the parties. The wife had obtained a sum of Rs.7.5 lacs under the compromise. She had appeared in this Court and furnished an affidavit that all the matrimonial disputes had been resolved for that reason the said FIR had been quashed. No party can be allowed to wriggle out of the compromise, which has in fact been entered into between the husband and wife. The compromise having been recorded in the Court, it cannot be said that any party was under some misconception or misunderstanding or was coerced to enter into that compromise. Satyawati complainant had derived benefit under the compromise and received Rs.7.5 lacs. It is not her sweet will that she would accept the compromise sometime and then having a second thought pray that the proceedings, which have already taken place on the basis of

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compromise be set aside.

Finding no merit in the application bearing No. CRM-7045-
2014 in CRM-M-33075-2011, the same stands dismissed.

Necessary information be sent to the quarter concerned.

11.9.2018
Brij

(H.S.MADAAN)
JUDGE

Whether reasoned/speaking : Yes/No

Whether reportable : Yes/No